STATE OF NEW YORK
UNEMPLOYMENT INSURANCE APPEAL BOARD
PO Box 15126
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DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 14, 2022

IN THE MATTER OF:
Appeal Board No. 623389

PRESENT: GERALDINE A. REILLY, MEMBER

The Department of Labor issued the initial determination, disqualifying the claimant from receiving benefits, effective August 25, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed May 4, 2022 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed by a not-for-profit agency as a service coordinator for children with mental illness and/or behavioral issues. She was not a union member. The employer had never previously issued a warning or reprimand to the claimant.

The employer would visit clients, unannounced, due to the nature of the agency and the employer's concerns about the well-being of the participants. Furthermore, the employer bore a responsibility to conduct due diligence, under law, by contacting a family before disenrollment from their services.

The claimant preferred to develop a rapport with the family and to notify the family in advance of any visit. She did not feel comfortable surprising a family, particularly as she could not pre-screen the family for Covid-19.

On June 29, 2021, the claimant was assigned five additional cases after a coworker resigned. As part of the reassignment, the employer directed the claimant to perform a home visit for a family with two teenagers with mental health and educational issues on or before July 20, 2021. The family had relocated to the area from out-of-state and had declined services and made no contact with the agency after November 2020. The family did not have a telephone at which they could be reached and, as of July 15, 2021, the claimant was unable to contact the family via telephone or mail. As a result, the employer directed the claimant to make an actual visit to the home as per their due diligence process.

The claimant refused to perform the visit because she did not know the family and was uncomfortable surprising them. In response, her supervisor arranged for a "wellness check" by the local police which occurred on or about July 19, 2021. The claimant followed up with the police department after the visit and was advised by the police department that the family was "fine." She notified her supervisor of the outcome.

On July 20, 2021, the claimant received an email from the employer's vice-president, copying her supervisor, regarding the family. The vice-president advised the claimant that she was not to close the case and asked her to perform a well-check visit before disengaging them from the program. The employer did not expect the claimant to enter the home to make the visit; she was simply expected to speak with them prior to ending their services. The claimant argued to her supervisor that the police had already performed a wellness check and continued to express her discomfort with arriving unannounced. She asked, instead, for her supervisor to remove her from the case; her supervisor declined to remove the claimant from the assignment. The supervisor notified the claimant that they would meet the following day regarding the matter.

Later that day, the supervisor advised the vice-president of the claimant's refusal to visit the family. The vice-president advised the supervisor to speak with human resources as to how to proceed with the claimant. Human resources directed the supervisor to issue a counseling memo to the claimant as to the refusal.

The following day, July 21, 2021, when the claimant and her supervisor met, the claimant was expecting a further discussion of her refusal to comply with the employer's directive to make a home visit. Rather, the claimant received a final written warning for insubordination for refusing to perform a home visit. The employer did not intend to discharge the claimant.

Claiming that she was blindsided and upset over the warning, and feeling that the warning was the last straw, the claimant notified the employer on July 21, 2021 of her intention to resign on August 24, 2021. She did not reach out to human resources, to the vice-president, or to her supervisor as to the matter before submitting her resignation.

The claimant worked through August 24 and did not return to work after August 24, 2021.

OPINION: The credible evidence establishes that the claimant resigned from her employment after the employer issued a final warning for the claimant's failure to perform a home visit to a newly assigned family. We disagree that Appeal Board No. 596838 and Matter of Raven apply to the circumstances herein. Both such cases are factually and legally distinguishable. In so determining, we find that in Appeal Board No. 596838, the

employer discharged the claimant for misconduct. We further note that, in Matter of Raven, the employer again discharged the claimant after the claimant precipitated her own discharge by arguing with her supervisor, a separation ultimately found to be non-disqualifying. (See Matter of Raven, 40 AD2d 128 [3d Dept. 1972]). The claimant, herein, resigned.

Although the claimant contends that the employer's direction, to visit a family, unannounced, was unreasonable, unnecessary, and not the employer's procedure, her contentions are not persuasive, nor do they excuse her resignation due to the employer's more consistent and credible testimony to the contrary.

We note that the claimant is a mental and behavioral service coordinator. She has performed home visits previously, before being assigned this additional family. The employer testified credibly that the employer did require employees to perform unannounced home visits, as needed, to verify the well-being of their clients. The employer explained, as to this family, that

there were mental health and educational issues to be addressed and the employer needed to make contact prior to ending such services, by law, to satisfy their due diligence requirement. We credit the employer's assertion that the police officer's viewpoint, as to the wellness check performed, did not reflect the same priorities as the employer, and as such, the employer's choice not to rely on that same is reasonable.

We find it significant that, at no point, did the claimant ever offer any specific or substantive reasons for her refusal to visit the family; at hearing, she posited a variety of generalities, that she was uncomfortable, that the visit had already been done by the police, that it was unnecessary, and that it was intrusive. We find, however, that the claimant never elucidated a specific reason for any objection but for an inability to perform a COVID pre-screen. Yet, the employer did not expect the claimant to enter the home. The employer hoped that the claimant would make contact at the door prior to discharging the family, which was not an unreasonable request.

There was no evidence, furthermore, that, if the family did not answer the door upon such visit, as the claimant anticipated, she would have to perform an additional visit. Her continued resistance to such a visit, even were it be futile, fails to override the employer's reasonable request of the claimant, so to verify the well-being of the children under the agency's care.

We further note too, that even if the employer's written warning, for refusing to attend to the family, was issued prematurely, the warning, alone, was not sufficient cause to resign. In so determining, we note that the claimant's employment was not in jeopardy and the employer anticipated a continued working relationship. Instead, the claimant, upset by the reprimand, immediately resigned without offering the employer any verified reasons and without any further discussion with her supervisor, the vice-president, or human resources.

Under these circumstances, the claimant's disagreement with the employer's business practices fails to serve as good cause to excuse her resignation, and that the claimant resigned in a fit of pique due to the written warning. Accordingly, we conclude that the claimant resigned without good cause.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits,

effective August 25, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER